

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WAYNE PETTAWAY,
Plaintiff,

v.

MS. SMOCK, et al,
Defendants.

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Civil Action No. 18-285E

District Judge Susan Paradise Baxter

MEMORANDUM OPINION

District Judge Susan Paradise Baxter

Plaintiff Wayne Pettaway, currently incarcerated within the State Correctional System of Pennsylvania, presented this civil rights case against Healthcare Administrator Ms. Smock and the Commonwealth of Pennsylvania. Plaintiff alleges that Ms. Smock is denying him medical treatment for Hepatitis C and is ignoring his requests for sick call. ECF No. 1, page 2. As relief, Plaintiff seeks immediate medical treatment. Id. at 3. Plaintiff seeks leave to prosecute *in forma pauperis* pursuant to 28 U.S.C. § 1915. ECF No. 4.

Section 804(g) of Pub.L. No. 104-134, enacted April 26, 1996, amended 28 U.S.C. § 1915 to provide:

[i]n no events shall a prisoner bring a civil action ... under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in the court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. §1915(g).

Plaintiff has been a prolific filer in this federal court. At least three of Plaintiff's prior lawsuits have been dismissed as legally frivolous or for failure to state a claim upon which relief may be granted: Pettaway v. SCI Albion, C.A. No. 11-158Erie; Pettaway v. SCI Albion, C.A. No. 12-1396 (Third Circuit); Pettaway v. State of Pennsylvania, C.A. No. 13-1551Pittsburgh; Pettaway v. District Attorney Zappala, C.A. No. 15-1431Pittsburgh; Pettaway v. Overton, C.A. No. 13-213Erie; and Pettaway v. Overton, C.A. No. 15-2156 (Third Circuit).

However, an indigent inmate may overcome the "Three Strikes Rule" if he can show¹ that he is under "imminent danger of serious physical injury." Abdul-Akbar v. McKelvie, 239 F.3d 307 (3d Cir. 2001) (interpreting imminent danger). See also Brooks-Bey v. Schmerfelt, 2011 WL 1398472, at *3 (M.D. Pa. March 21, 2011). In spite of the prior dismissals, Plaintiff's allegations of the denial of medical treatment are sufficient to state that he is in imminent danger of serious physical injury. Accordingly, Plaintiff's motion for leave to proceed *in forma pauperis* [ECF No. 3] will be granted by separate order.

An appropriate Order follows.

¹ It is a plaintiff's burden to prove entitlement to *in forma pauperis* status. Robert v. Walls, 2011 WL 1599652, at *1 (W.D. Pa. March 14, 2011) citing White v. Gregory, 87 F.3d 429, 430 (10th Cir. 1996).